IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 5TH NOVEMBER 2007 / 14TH KARTHIKA 1929

Crl.MC.No. 3355 of 2007()

CC.728/2006 of JUDL. MAGISTRATE OF FIRST CLASS COURT, KODUNGALLUR

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PETITIONER: 2ND ACCUSED

SUNDARAN, S/O. AYYAPPAN ACHARI,
THALIKKULANGARA VEEDU, NATTIKA P.O.,
TRICHUR-680 566.

BY ADV. SRI.V.G.ARUN
SRI.T.R.HARIKUMAR

RESPONDENTS: COMPLAINANT AND DEFACTO COMPLAINANT

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1. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. VINITHA, D/O. MOHANAN,
NARANATHARA HOUSE, CHOOLISSERY P.O.,
MUNDUR (VIA), TRICHUR-680 541.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 05/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.3355 of 2007

Dated this the 5th day of November 2007

O R D E R

The petitioner is the second accused and he faces indictment in a prosecution under Section 498A I.P.C. The de facto complainant is his daughter-in-law and the first accused is his son. The third accused is his wife, that is the mother-in-law of the de facto complainant. She has already committed suicide and the charge against her has abated now.

2. According to the learned counsel for the petitioner, the second accused is absolutely innocent. He is employed abroad. He is unable to come down to India to face the trial. The petitioner herein has a very good case to advance to claim discharge under Section 239 Cr.P.C. The prosecution may now be quashed. In the alternative the petitioner may be permitted to appear through counsel before the learned Magistrate and plead discharge under Section 239 Cr.P.C. This, in short, is the prayer made.

3. I have gone through the allegations in the final report filed. The case diary statements of witnesses have not been made available to me. I am satisfied that the interests of justice will be served ideally by permitting the petitioner to appear

through his counsel before the learned Magistrate and raise his plea for discharge under Section 239 Cr.P.C.

4. In the result, this petition is allowed. Following directions are issued:

i) The petitioner/accused shall be permitted to appear through counsel before the learned Magistrate.

ii) Through counsel, he shall be permitted to raise his plea of discharge under Section 239 Cr.P.C.

iii) Until the said plea is considered and unless the learned Magistrate feels that the charges are liable to be framed against the petitioner, the learned Magistrate shall not insist on the personal appearance of the petitioner, if he is duly represented by a counsel.

iv) A decision on the question of discharge shall be taken as expeditiously as possible.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007